

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP No. 575 of 2011 in RSA No. 118 of 1992

Reserved on : 13.3.2012.

Date of Decision : 13.4.2012

**State of Himachal Pradesh, through Collector, Mandi, District Mandi,
Himachal Pradesh.**

...Non-applicant/Appellant.

Versus

- 1. Nagender Singh**
- 2. Smt. Ayudhia**
- 3. Smt. Kaushlya Devi**

...Applicants/Respondents

- 4. Yoginder Singh**
- 5. Daya Nand**

..Proforma Applicants/Respondents.

**All sons and daughters of late Sh.Gulab Singh, R/o Village
Dudar, Tehsil Sadar, District Mandi, H.P.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting ?¹ yes

**For the Non-Applicant/Appellant: Ms. Ruma Kaushik, Addl. A.G.
with Mr. J.S.Rana, Asstt. A.G.**

For the Applicants/Respondents: Mr. Suneet Goel, Advocate.

Kuldip Singh, Judge

This is an application under Section 152 C.P.C. for amendment of judgment, decree dated 4.1.1992. It has been stated that applicants No. 1 to 3 with proforma respondents 4, 5 filed Civil Suit No. 124 of 1987 for declaration pertaining to Khasra Nos. 770, 771, 773, 777, 779, 783 measuring 55-8-12 bighas before the learned Sub Judge 3rd

¹ Whether reporters of Local Papers may be allowed to see the Judgment ? yes

Class, Court No. III, Mandi which was dismissed on 24.10.1988. The Civil Appeal No. 6 of 1989 filed by the applicants No. 1 to 3 and proforma respondents 4, 5 was allowed by learned Additional District Judge, Mandi on 4.1.1992. The area measuring 55-8-12 bighas of Khasra Nos. 770, 771, 773, 777, 779, 783 and 791 has been reflected in the judgment dated 4.1.1992 as 55-3-12 bighas due to typographical error. The State of H.P. filed RSA No. 118 of 1992 against judgment, decree dated 4.1.1992 which was dismissed on 6.4.1998.

2. The applicants filed an application under Section 152 C.P.C. before the learned Additional District Judge, Mandi on 4.7.2008 for amendment of decree to the extent that the area had been mentioned as 55-3-12 bighas instead of 55-8-12 bighas. The application was contested by the respondents. The learned Additional District Judge, Mandi has dismissed the application on 25.4.2011 on the ground that he has no jurisdiction to entertain the application as the decree of the subordinate Court had merged with the decree of the High Court. It has been held that the application is not maintainable. Now in the application the applicants have prayed that the judgment, decree dated 4.1.1992 reflecting land measuring 55-3-12 bighas may be corrected to 55-8-12 bighas as stated in the judgment, decree dated 24.10.1988.

3. The State has filed the reply. In the reply preliminary objections of maintainability, estoppel have been taken. It has been stated that RSA No. 118 of 1992 was summarily dismissed on 6.4.1998 on the basis of RSA No. 5 of 1991 decided by the High Court on 13.11.1997. The High Court had not drawn separate decree sheet in RSA No. 118 of 1992. The order dated 25.4.2011 passed by the learned Additional District Judge, Mandi on the application under Section 152

CPC has not been assailed by the applicants, which has attained finality. The submission has been made for dismissing the application.

4. Heard and perused the record. In judgment dated 24.10.1988 in Civil Suit No. 124 of 1987 the land has been described as Khasra Nos. 770, 771, 773, 777, 779, 783, 791 Kita 7 measuring 55-8-12 bighas. In decree sheet in Civil suit No. 124 of 1987 the land again has been described as Khasra Nos. 770, 771, 773, 777, 779, 783, 791 Kita 7 measuring 55-8-12 bighas. In judgment in Civil Appeal No. 6 of 1989 dated 4.1.1992 the land has been described as Khasra Nos. 770, 771, 773, 777, 779, 783 and 791 measuring 55-3-12 bighas. In judgment dated 6.4.1998 in RSA No. 118 of 1992 the land has not been described by Khasra Nos. or by area. The record of RSA No. 118 of 1992 has been perused. In the decree sheet in Civil Appeal No. 6 of 1989 the operative part of the decree is as follows:-

“Appeal No. 6th of 1989 from the judgment and decree of the Court of the Sub Judge (Court No.3), dated the 24th day of October, 1988 whereby the suit of the appellants for declaration of title qua the land comprised under Khewat Khatoni No. 48 min/218, Khasra Nos. 770, 771, 773, 777, 779, 783 & 791 measuring 55-3-12 bighas, situated in village Tepar, Tehsil Sadar, District Mandi has been dismissed leaving the parties to bear their own costs”.

xx xx xx

“This appeal coming on for hearing on the 4th day of January, 1992 before me (Sh. R.S.Negi) Addl. District Judge, Mandi, H.P. of - in the presence of Sh. Bhagat Ram Sharma, Adv.counsel for the Appellant and of Sh. A.S.Rana, Dy.D.A. for Respondent, it is hereby declared that the appeal be & the same is hereby accepted, judgment & decree of the trial court are set aside & suit of the plaintiff-appellants decreed for declaration that they have become the owners of

the suit land as detailed in para I of the judgment by afflux of time”.

In RSA No. 118 of 1992, the operative part of the decree is as follows:

“D e c r e e

This appeal coming up for hearing on the 6th day of April, 1998 before a Single Bench consisting of Hon’ble Mr.Justice P.K.Palli, Judge, High Court of Himachal Pradesh, Shimla, in the presence of Sh.R.M.Bisht, Assistant Advocate General, for the appellant and Sh.M.C.Mandhotra, Advocate, for respondents No. 1, 4 and 5 ; it is ordered that for the reasons given in the judgment dated 6-4-1998, the present appeal be and the same is hereby dismissed with no order as to costs.

GIVEN under my hand and Seal of the Court, this 6th day of April, 1998.

Sd/-
Superintendent (Judicial)

Sd/-
Deputy Registrar (Judicial)”.

5. The record of Civil suit No. 124 of 1987 tagged with the file of RSA No. 118 of 1992 has also been perused. In the plaint in Civil Suit No. 124 of 1987 the land has been described as Khasra Nos. 770, 771, 773, 777, 779, 783 & 791 Kita 7 measuring 55-8-12 bighas. In Civil Suit No. 124 of 1987 file Ext.Dy Missal Hakiyat Jadid Bandobast area of Khasra Nos. 770, 771, 773, 777, 779, 783 and 791 Kita 7 has been shown 55-8-12 bighas. The State in the reply to the application under Section 152 CPC has not taken the plea that the area of Khasra No.770, 771, 773, 777, 779, 783 and 791 is measuring 55-3-12 bighas and not 55-8-12 bighas. It appears due to typing error in the judgment dated 4.1.1992 of learned Additional District Judge, the area of Khasra Nos. 770, 771, 773, 777, 779, 783 and 791 has been typed 55-3-12 bighas instead of 55-8-12 bighas, this mistake has been repeated in decree

sheet of Civil Appeal No. 6 of 1989. In the judgment and decree dated 6.4.1998 in RSA No. 118 of 1992 Khasra Nos. or their area have not been mentioned.

6. The learned Additional District Judge, Mandi vide order dated 25.4.2011 has held that application under Section 152 CPC filed by the applicants in that Court for amendment of judgment, decree dated 4.1.1992 is not maintainable, such application is to be filed before the High Court.

7. In **M/s Gojer Brothers (P) Ltd. vs. Shri Ratan Lal Singh AIR 1974 Supreme Court, 1380** one of the questions before the Supreme Court was whether the decree of the trial Court has merged in the decree of the High Court. The Supreme Court has held that in cases where the decree of the trial Court is carried in appeal and the appellate Court disposes of the appeal after a contested hearing, the decree to be executed is the decree of the appellate Court and not of the trial Court. It has further been observed that if the Court of appeal confirms, varies, reverses the decree of the lower Court, the decree of the appellate Court is the only decree that can be amended. The Supreme Court in para 18 of the report has held that the fundamental reason of the rule that where there has been an appeal, the decree to be executed is the decree of the appellate Court is that in such cases the decree of the trial Court is merged in the decree of the Appellate Court. In course of time, this concept which was originally restricted to appellate decrees on the ground that an appeal is a continuation of the suit, came to be gradually extended to other proceedings like Revisions and even to proceedings before quasi-judicial and executive authorities.

8. In **Kannan and others vs. Narayani and others AIR 1980 Kerala 76 (FB)**, it has been held as follows:-

“In these circumstances, we hold that except in cases to which Section 153-A of the Code of Civil Procedure applies, where there has been an appeal, the decree under appeal merges in the decree in appeal and it is only the appellate Court that could correct or amend the decree under Section 152 of the Code. In this view, the order of the Court below is correct and calls for no interference. The Revision Petition is dismissed. Parties are directed to suffer costs.”

In **Devi Roop vs. Smt. Devku and others AIR 2006 Himachal Pradesh 114**, it has been held that if the decree of the trial Court has merged in the decree of the appellate Court, then of course the trial Court has no jurisdiction to amend the same.

9. In the present case the judgment and decree dated 4.1.1992 was carried in Appeal No. 118 of 1992 which was dismissed on 6.4.1998 after contest. It is not a case where Section 153-A CPC is applicable. The judgment, decree dated 4.1.1992 has merged in the judgment, decree dated 6.4.1998 in RSA No. 118 of 1992. The application under Section 152 CPC for amendment of judgment and decree 4.1.1992 lies in the High Court and not before the Additional District Judge. It has been established on record that due to inadvertent typing error the area of Khasra Nos. 770, 771, 773, 777, 779, 783 and 791 in the judgment and decree dated 4.1.1992 has been typed 55-3-12 bighas instead of 55-8-12 bighas. Therefore, by way of amendment in the judgment, decree dated 4.1.1992 in Civil Appeal No. 6 of 1989 in paragraph 1 of the judgment and in the decree sheet, the area of Khasra Nos. 770, 771, 773,

777, 779, 783 and 791 is required to be corrected as 55-8-12 bighas instead of 55-3-12 bighas.

10. In view of above, the application is allowed. The learned Additional District Judge, Mandi, is directed to amend and correct the judgment and decree dated 4.1.1992 in Civil Appeal No. 6 of 1989 with red ink by substituting area of Khasra Nos. 770, 771, 773, 777, 779, 783 and 791 as 55-8-12 bighas instead of 55-3-12 bighas and shall sign the correction with date giving note in the margin that correction has been made by the order dated 13.4.2012 of the High Court in CMP No. 575 of 2011 in RSA No. 118 of 1992. The application stands disposed of on above terms.

April 13, 2012
(GR)

(Kuldip Singh),
Judge.